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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,197	04/28/2005	Gilles Lemaire	CU-4184 BWH	9021
26530 7590 12/10/2008 LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604				
EXAMINER STIMPERT, PHILIPPEARL				
ART UNIT		PAPER NUMBER		
3746				
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12/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/533,197

**Applicant(s)**

LEMAIRE ET AL.

**Examiner**

Philip Stimpert

**Art Unit**

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10 and 12-16 is/are rejected.
- 7) ☒ Claim(s) 11, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. (US 6,347,572) in view of Gesell (3,141,309).

1. Regarding claim 10, Martin et al. teach a hydraulic motor comprising a cam (4A, 4B) and a cylinder block (6) suitable for rotating relative to each other about an axis of rotation (10), the cylinder block (6) having a plurality of cylinders (12A, 12B) connected via cylinder ducts (15A, 15B) to communication orifices (at 42B in Fig. 1) disposed in a communication face (30) of the cylinder block (6), pistons (14A, 14B) slidably mounted in the cylinders (12A, 12B) for cooperating with the cam (4A, 4B), the motor further comprising a fluid distributor (16) constrained in rotation (by 17) with the cam (4A, 4B) about the axis of rotation (10), and having a distribution face (28) which is provided with distribution orifices (42B) comprising orifices suitable for being connected to a feed duct (either of 24 or 26, depending on mode of operation) and orifices suitable for being connected to a discharge duct (the other of 24 or 26), the distribution face (28) and the communication face (30) facing each other so as to put the communication and distribution orifices into sequential respective communication during rotation of the cylinder block (6) relative to the distributor. Martin et al. also teach a series of grooves

(20, 21, 22) the first and last of which are permanently associated with the feed/discharge ducts (24 with 20, 26 with 22), the grooves being provided so as to allow a selection of operating capacity of the hydraulic mechanism (col. 7, ln. 30-39). Martin et al. do not teach that any given cylinder (12A, 12B) fluidly communicates with more than one communication orifice (42A), though Martin does teach that all of the cylinders and communication orifices are formed in the same cylinder block (6) and are thus connected. Gesell teaches an air conditioning apparatus having radially oriented, cam driven pistons. In particular, Gesell teaches that each cylinder (27) has two communication ducts (31, 32) ending in communication orifices (at the interface with the manifold plate 20 or 100). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the hydraulic motor of Martin et al. with the multiple communication orifices taught by Gesell in order to bring the cylinders into communication with more than one of the capacity adjusting grooves of Martin et al. According to this combination, both of the communication orifices of a given cylinder would communicate with one of the feed duct and the discharge duct, according to the setting of the capacity valve shown in Fig. 7, as simultaneous communication with both the feed and discharge ducts would be useless. Further, the communication orifices of Gesell are spaced apart radially, and arranged angularly so as to allow the communication described above (essentially, the orifices have an angular spacing of zero). Additionally, the pairs of communication orifices of Gesell are formed angularly spaced from each other in the cylinder block (16), and are thus connected while still allowing the cylinders to communicate with multiple communication orifices.

2. Regarding claim 12, the communication orifices as taught by Gesell lie within a projection in the direction of the axis of rotation of the cylinder onto the communication face (as shown in Fig. 3).
3. Regarding claim 13, Gesell teaches that the communication orifices are both disposed on the axis of the cylinder as shown in Fig. 3, and thus are symmetric with respect thereto.
4. Regarding claim 14, Gesell teaches that both of the communication orifices are disposed intersecting a plane defined by the axis of the cylinder with which they communicate and the axis of rotation.
5. Regarding claim 15, Gesell teaches that all cylinders are connected to two communication orifices (31, 32), and it would be obvious to provide those orifices to all of the cylinders of Martin et al. in the combination to obtain the full effect of the combination.
3. Regarding claim 16, Gesell teaches that the angular spacing, namely zero degrees, between the two communication orifices of a given cylinder is the same for all cylinders.

***Allowable Subject Matter***

4. Claims 11, 17, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter: the limitation of non-zero angular spacing between cylinder communication

orifices believed to be required by claims 11 and 17, as well as the active and inactive cam lobes of claim 18, in combination with the remaining limitations of these claims and their parent claims is not shown in the prior art of record.

***Response to Arguments***

6. Applicant's arguments, see page 5, filed 29 August 2008, with respect to indefiniteness have been fully considered and are persuasive. The indefiniteness rejections of claims 10-18 have been withdrawn.

7. Regarding the argument that Gesell does not teach angularly spaced communication orifices, as noted above, the claim does not explicitly require that the two communication orifices which are spaced apart angularly are the orifices through which the fluid communication takes place.

8. In response to applicant's arguments against Gesell simultaneous connection to the feed and exhaust ducts, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, one of ordinary skill would appreciate both that connecting to the same one of the feed or exhaust ducts would further the capacity of Martin et al. to provide multiple operating capacities, and that connecting the feed and exhaust of Martin et al. would essentially result in a hydraulic short circuit and lost energy. It is therefore insufficient to argue that Gesell alone does not disclose that limitation.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Stimpert whose telephone number is (571)270-1890. The examiner can normally be reached on Mon-Fri 7:30AM-4:00PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
Unit 3746

/P. S./  
Examiner, Art Unit 3746  
5 December 2008